

ENVIRONMENTAL PROTECTION  
LAND USE MANAGEMENT  
LAND USE REGULATION PROGRAM

Ninety-Day Construction Permits

Proposed Amendments:	N.J.A.C. 7:1C-1.5
Authorized By:	Bradley M. Campbell, Commissioner, Department of Environmental Protection
Authority:	N.J.S.A. 13:1D-29 et seq.
Calendar Reference:	See Summary below for explanation of exception to calendar requirement

DEP Docket Number: 06-03-04/393

Proposal Number:

A Public hearing concerning the proposal will be held:

Submit written comments by (60 days after proposal) to:

Janis E. Hoagland  
Attn: DEP Docket Number: 06-03-04/393  
Office of Legal Affairs  
New Jersey Department of Environmental Protection  
P.O. Box 402  
Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on 3½ inch diskettes as well as on paper. The Department will be able to upload the comments onto its office automation equipment and will avoid having to retype the comments. The Department will use the paper version of the comments to ensure that the uploading was accomplished successfully. Submittal of comments on diskette is not a requirement. The Department prefers Microsoft Word 6.0 or above; however, other word

processing software that can also be read or used by Microsoft Word 6.0 is acceptable.

MacIntosh formats should not be used.

The proposal can be viewed or downloaded on the Land Use Regulation Program website at <http://www.state.nj.us/dep/landuse>. A copy of the proposal is available by e-mailing the Department at [lurweb@dep.state.nj.us](mailto:lurweb@dep.state.nj.us), or by calling the Department at (609) 984-3444. The agency proposal follows:

### **Summary**

The Department of Environmental Protection is proposing amendments to the stream encroachment fee provisions of the Ninety-Day Construction Permits rules, at N.J.A.C. 7:1C-1.5. As the Department has provided a 60 day comment period on this notice of proposal, this proposal is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Stream encroachment permits are issued under the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and the Department's Flood Hazard Area Control Act rules at N.J.A.C. 7:13. A State-run program may derive its funding from legislative appropriations, by directly charging those seeking a service through permit fees, or through a combination of both. The fees collected for stream encroachment permits affect both those who develop property and those who purchase property. Property with permit and development approvals is more costly than property sold contingent upon receiving such approvals, while funding through legislative appropriation is borne by all taxpayers. At this time, the permit fees collected by the Department amount to approximately 50% of the cost to operate the flood hazard regulatory program. In an effort to close this gap and avoid the need to increase dependence on legislative appropriations to

fund this program, the Department is proposing to increase the stream encroachment fees by 100%.

Over the past 20 years, the Department has increased the permit fees for the flood hazard regulatory program three times. Existing N.J.A.C. 7:1C-1.5(a)4i classifies activities regulated under this program as either major elements or minor elements and assigns permit review fees accordingly. The current stream encroachment fee schedule was promulgated in March 1993 (see 25 N.J.R. 924(a)), and increased fees for major elements by 33% and fees for minor elements by 100%. Prior fee amendments had increased fees for both major and minor elements by 50%, effective June 17, 1985 (see 17 N.J.R. 1544(a)), and by 100%, effective June 4, 1981 (see 13 N.J.R. 334(b)). The following table shows the permit review fees for major and minor elements since 1981:

<b>Effective date</b>	<b>Fee for each major element</b>	<b>Fee for each minor element</b>
Prior to June 4, 1981	\$500.00	\$50.00
June 4, 1981	\$1,000	\$100.00
June 17, 1985	\$1,500	\$150.00
March 1, 1993	\$2,000	\$300.00
Proposed	\$4,000	\$600.00

### **Social Impact**

The proposed amendments to increase stream encroachment permit fees for the flood hazard program will have a positive social impact for the majority of New Jersey's taxpayers because increased fees will reduce the need for higher taxes to support the legislatively mandated activities of the Department. In addition, society as a whole benefits from regulating construction within flood hazard areas and protecting surface waters and stream corridors because of the value

they provide for water quality protection, flood protection, and as habitat for fish and wildlife, including commercial and recreational species. The amendments to increase fees may also have a positive social impact if they discourage some applicants from pursuing construction in flood hazard areas and along stream corridors.

The proposed amendments will result in a negative social impact for the building industry because they will increase the permitting costs necessary for construction in environmentally sensitive areas. The proposed fee increases may also result in increased costs for housing and other buildings if the construction industry passes its fees on to the individuals purchasing new homes and commercial structures.

### **Economic Impact**

The proposed amendments to increase stream encroachment permit fees for the flood hazard program will have a positive economic impact on the majority of New Jersey's taxpayers because increased fees will reduce the need for higher taxes to support the legislatively mandated activities of the Department. To the extent that the proposed fee increases might discourage development in flood hazard areas and along stream corridors, the amendments could have a positive economic impact in avoiding the costs that can be incurred for the maintenance or repair of buildings in areas that may be vulnerable to flood damage, settling, mold, mildew and other moisture problems.

The proposed fee increases may result in a negative economic impact for the building industry because they will increase the permitting costs required for construction in flood hazard areas and along stream corridors. However, the Department believes that, despite the increases, the permit fees still constitute a relatively small expense compared to the overall costs of

developing in environmentally sensitive areas. In 2001, the Department issued 644 stream encroachment permits and the number of permit actions has been increasing each year. Since each approval represents a development project of some type, it seems safe to assume that, despite the permit fees, there is a substantial economic benefit accrued by the applicant or developer to pursue their proposed developments despite environmental constraints.

The proposed fee increases may also result in increased costs for housing and other buildings if the construction industry passes its fees on to the individuals purchasing new homes and commercial structures. Increased fees for projects by public entities, such as county bridge replacements and municipal roadway improvements, are likely to be passed on to taxpayers through local property taxes. However, permitting fees represent a very small percentage of the overall budget for such projects, and the Department believes the fees are justified by the flood-risk reduction and environmental benefit resulting from the State's regulation and review of proposed projects under the flood hazard program.

Persons affected by the flood hazard program include property owners situated in flood hazard areas and along stream corridors. Property owners outside these areas are affected only incidentally by this program, inasmuch as the costs for local flood relief efforts are likely borne by taxpayers, and restrictions on land uses within flood hazard areas may increase property values outside them. The flood hazard program also imposes additional design and construction standards on both private and public roadways, which increases construction costs but also increases the life span of such roadways and reduces flood damage potential. Therefore, while the program does place some additional burden on local governments and developers who propose to build roads and buildings in flood hazard areas, the added cost of compliance is necessary and appropriate to offset potential loss of life and property.

### **Federal Standards Analysis**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995 c. 65) require State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards analysis.

Although the Federal Emergency Management Agency (FEMA) delineates some flood hazard areas in the State for the purposes of the Federal flood insurance program, there is no Federal agency or program that directly regulates activities in flood hazard areas based on their potential flooding impacts. The Code of Federal Regulations Title 44 Part 60 enables FEMA to require municipalities that participate in the National Flood Insurance Program (NFIP) to adopt certain flood hazard reduction standards for construction and development in 100-year flood plains. However, a community's participation in the NFIP is voluntary, and FEMA does not otherwise regulate land uses in flood hazard areas. Furthermore, the Federal flood reduction standards at C.F.R. Title 44 Part 60 are administered by local governments. Therefore, the Department has determined that the proposed stream encroachment fee amendments do not exceed any Federal standards or requirements, and that Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require any further analysis.

### **Environmental Impact**

The proposed amendments will have a positive environmental impact by providing revenues to support the Department's flood hazard program. The program helps ensure that development proposed along stream corridors and within flood hazard areas is constructed in such a way as to avoid or minimize flooding, erosion, sedimentation and water quality impacts.

### **Jobs Impact**

The proposed amendments are not expected to have any job impacts since the amendments will increase already existing fees for development of flood hazard areas. There are no changes in procedural requirements and no greater permitting restrictions or requirements that would result in the loss or gain of jobs relating to the construction or environmental consulting industries. It is possible that the smaller development companies may find the proposed fees cost prohibitive and seek employment outside the State of New Jersey.

### **Agriculture Industry Impact**

Pursuant to N.J.S.A. 52:14B-4, the Department evaluated this rulemaking to determine the nature and extent of the impacts of the proposed amendments on the agriculture industry.

In general, agricultural activities such as farming and silviculture do not require a stream encroachment permit, unless there is a residential or commercial development component associated with the agricultural use, and these components exceed the jurisdictional thresholds established in the Flood Hazard Area Control Act rules at N.J.A.C. 7:13. Since few new farms are being established in New Jersey, the proposed amendments are not likely to have any effect upon the agriculture industry.

### **Regulatory Flexibility Analysis**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that some of those builders and property owners that may

be affected by the proposed amendments are "small businesses" as defined by the Regulatory Flexibility Act. The stream encroachment program applies to any person owning property containing a flood hazard area and/or stream corridor, who intends to engage in a regulated activity. The Department is not able to estimate the number of small businesses that own property affected by the Flood Hazard Area Control Act rules.

The proposed fee amendments will not impose additional reporting or recordkeeping requirements on small businesses. However, the proposed fees are based upon the type of permits being sought, which in turn are based on potential impacts to flooding and the environment. Therefore, the proposed fee increases will generally have the same impact on a small business as on any other person (see Economic Impact above). Because minimizing flooding danger and flood damage is important to all persons, and the proposed amendments to the fees are necessary to provide revenues to maintain appropriate review and protection from flooding danger and damage, no lesser requirements for small businesses are provided.

### **Smart Growth Impact**

Inasmuch as the Ninety-Day Construction Permits rules establish fees necessary to operate the flood hazard regulatory program, which in turn discourages incompatible development of environmentally sensitive features that are vital to the health and well-being of the present and future citizens of the State, the proposed amendments to increase stream encroachment permit fees are consistent with the law and policy of New Jersey to promote smart growth and to reduce the negative effects of sprawl and disinvestments in older communities, as described in Executive Order No. 4 (2002). The flood hazard program ensures that development within flood hazard areas and along stream corridors, which is likely to have a greater

environmental impact and related economic costs than development outside these areas, is closely scrutinized and, as appropriate, discouraged. Therefore, the proposed amendments comport with the goals of smart growth and implementation of the State Plan described in Executive Order No. 4 (2002).

Full text of the proposed amendments follows (additions indicated in boldface thus;) deletions indicated in brackets [thus]:

## CHAPTER 1C NINETY DAY CONSTRUCTION PERMITS

### SUBCHAPTER 1. NINETY DAY CONSTRUCTION PERMITS RULES

#### 7:1C-1.5 Fees

(a) Fees shall be charged for the review of any application for a construction permit in accordance with the following schedule:

1. – 3. (No change.)

4. Stream encroachment permits:

i. (No change.)

ii. For each project element of minor stream encroachment projects, the fee shall be [\$300.00]

\$600.00 for each project element that is to be reviewed.

iii. For each project element of major projects, the fee shall be [\$2,000] \$4,000 for each project element that is to be reviewed.

iv. For major stream encroachment projects requiring the establishment of an encroachment line or the modification to a stream, the fee shall be [\$2,000] \$4,000 for each 1,000-foot reach of the channel or portion thereof.

v. For major stream encroachment projects that consist of an individual driveway culvert and fill in the floodplain for one single family residence, the fee shall be [~~\$1,000~~] \$2,000 for the culvert and [~~\$400.00~~] \$800.00 for the fill.

vi. (No change.)

5. (No change.)

(b) through (k) (No change.)

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order No. 27 (1994), permit the public to understand accurately and plainly the purpose and expected consequences of these proposed amendments. I hereby authorize this proposal.

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Date

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BRADLEY M. CAMPBELL  
Commissioner